

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

Civ. No. 03-00346 MV/WDS

SCOTT ESPARZA, SHARLA ESPARZA,
LOS ALAMOS NATIONAL BANK, N.A.,
AMWEST SURETY INSURANCE
COMPANY, and the DEPARTMENT OF
THE TREASURY, INTERNAL REVENUE
SERVICE,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court *sua sponte*. In this matter, Plaintiff Bank of America, N.A., (“Bank of America”) filed a complaint seeking a judgment against Defendants Scott Esparza and Sharla Esparza for default under a promissory note, foreclosure on the mortgage on the real property (the “Property”) given as security for the payment of the promissory note, and sale of the Property to satisfy the judgment. Defendants Los Alamos National Bank and Amwest Surety Insurance Company (“Amwest”) also have mortgages secured by the Property, both of which are inferior in priority to the Bank of America mortgage.

On October 28, 2003, the Court entered an Order finding that Bank of America had a valid first mortgage lien on the Property; foreclosing the mortgage held by Bank of America; granting Bank of America a judgment against the Property and against Scott Esparza and Sharla Esparza in the amount of \$3,451,719.62; ordering the sale of the Property to satisfy the judgment

granted to Bank of America (and, if there were any remaining proceeds, to satisfy the junior lienholders); and appointing a special master to oversee the sale of the Property. The Property was sold at public auction by the special master on Friday, December 19, 2003. The highest and best bid was in the amount of \$2,723,000.00, which was less than the amount needed to satisfy the judgment obtained by Bank of America. Consequently, there are no proceeds from the sale of the Property available to satisfy any of the junior lienholders.

On July 28, 2003, Amwest filed a motion for partial summary judgment on its cross-claim against Scott Esparza and Sharla Esparza for amounts allegedly due under a promissory note in the amount of \$1,000,000 plus interest given to Amwest and secured by a mortgage on the Property as well as for amounts allegedly due for breach of a Bail License Agreement. Amwest's motion also seeks foreclosure of its mortgage on the Property and a deficiency judgment for the amount owed by Scott Esparza and Sharla Esparza to Amwest that is not satisfied by the proceeds from the sale of the Property.

It appears that the cross-claim asserted by Amwest may raise the same matters as those being litigated between the parties in a previously-filed case in Lancaster County, Nebraska, captioned *State of Nebraska, ex rel., L. Tim Wagner, Director of Insurance of the State of Nebraska, as Liquidator for Amwest Insurance Company and as Liquidator of Far West Insurance Company v. Scott J. Esparza, et al.*, Case No. 02-4542, (the "Nebraska case"). The

Court hereby requests supplemental briefing from Amwest, Scott Esparza and Sharla Esparza on the following matters:

- 1) Whether the issues raised in Amwest's motion for partial summary judgment on its cross-claim are the same issues currently pending in the Nebraska case.
- 2) If so, why this Court should not stay the proceedings between the parties in this case pending resolution of the Nebraska case.

The supplemental briefs should also identify the issues, if any, that will remain in this case after resolution of the Nebraska case.

IT IS THEREFORE ORDERED that Defendant Amwest, Defendant Scott Esparza, and Defendant Sharla Esparza shall file supplemental briefs on the issues identified above by January 30, 2004.

Dated this 21st day of January, 2004.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE